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HUMAN RIGHTS COMMITTEE
Sixty-fourth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Austria

1. The Committee considered the third periodic report of Austria (CCPR/C/83/Add.3) at its 1718th and 1719th meetings (CCPR/C/SR.1819-1719), held on 30 October 1998, and adopted the following concluding observations at its 1726th meeting (CCPR/C/SR.1726), held on 5 November 1998.

A. Introduction

2. The Committee welcomes the detailed report submitted by the State party and expresses its appreciation for the clear, updated information provided orally by the delegation. While noting the high quality of the report of the State party, the Committee notes the considerable delay in its submission; the report would have been improved by the inclusion of quantitative and practical data, although the delegation provided such additional information.

B. Positive factors

3. The Committee welcomes the ratification by Austria of the Second Optional Protocol to the Covenant with effect from 2 June 1998.

4. The Committee welcomes the withdrawal by Austria of some of its reservations to the Covenant; it would have been appreciated if the reasons for these withdrawals and the precise nature of their effect, as well as the reasons for maintenance of the remaining reservations, had been more clearly explained.

5. The Committee welcomes the recent constitutional and legislative changes aimed at improved protection against discrimination; the admission of women to the armed forces and their advancement in the Civil Service is appreciated; legislation to promote the rights and prospects of disabled persons is also welcomed.

6. The Committee also welcomes the end to the monopoly on radio broadcasting and the establishment of private radio stations in Austria.

C. Principal subjects of concern and recommendations

7. While noting that the European Convention for the Protection of Human Rights and Fundamental Freedoms has been incorporated into the Austrian Constitution, the Committee emphasizes that a number of articles of the Covenant exceed the scope of the provisions of the European Convention. The Committee, therefore, recommends that the State party ensure that all rights protected under the Covenant are given effect in Austrian law.

8. The Committee is concerned that the State party made it clear that it has no intention of adopting appropriate procedures for taking into account the Committee's Views under the Optional Protocol consistent with its obligations under article 2 of the Covenant.

9. The Committee is concerned that there is no provision in the Code of Criminal Procedure whereby a statement by way of confession must, if challenged, be proved not to have been extracted by means of torture or ill-treatment. The Committee recommends that steps be taken to amend the Code of Criminal Procedure in this regard.

10. The Committee notes with concern that the presence of a lawyer to advise a detained person is not authorized at the preliminary stage of judicial criminal investigation (prior to the person's appearance before a judge). It recommends that the Code of Criminal Procedure be revised so as to guarantee more fully the right of a suspect to be assisted by a lawyer at all stages of the proceedings. Further, whilst commending the efforts undertaken by the State party to prevent, investigate and punish acts of ill-treatment of suspects and detainees, the Committee regrets that audio recording of the interrogations of the detainees is not yet used systematically. The Committee recommends that audio recording of interrogations be implemented in all Länder.

11. The Committee is concerned about certain features of Austria's law and procedure concerning asylum seekers and immigrants. These concerns relate to (i) apparently insufficient legal guarantees to prevent deportation in cases where there is a risk of treatment that would violate article 7; (ii) the treatment of persons against whom there is a deportation decision but who remain in the country, raising issues under articles 7, 10 and 16; and (iii) sanctions against passenger carriers and other pre-frontier arrangements that may affect the rights of any person to leave any country, including his or her own (art. 12, para. 2 of the Covenant).

12. The Committee considers that, despite recent reforms, the nature and functions of the autonomous administrative tribunals continue to raise

questions in connection with the requirements of "due process" under article 14 of the Covenant. It encourages the State party fully to implement the principle of independence of all courts and tribunals.

13. The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions.

14. The Committee notes with concern that the State party appears to restrict the definition of minorities to certain legally recognized groups. It requests that specific information on all ethnic, religious or linguistic minorities be included in Austria's next periodic report, in the light of the Committee's General Comment No. 23 (50).

15. The Committee is concerned that legal provisions in Austria relating to the recognition of religions and the benefits accorded to recognized religions may result in discrimination contrary to articles 18 and 26 of the Covenant.

16. The Committee would appreciate information, in the next periodic report, about the application and effect of article 283 of the Criminal Code, concerning propaganda and incitement to war and to national, racial or religious hatred.

17. The Committee requests that in its next periodic report the State party provide further information about measures being implemented to counter all forms of violence against women.

18. The Committee requests that the State party address the Committee's concerns and recommendations in detail in its next periodic report.

19. The Committee sets the date for the submission of Austria's fourth periodic report as October 2002. It requests that the text of the State party's third periodic report and the present concluding observations be published and widely disseminated within Austria and that the next periodic report be disseminated among non-governmental organizations operating in Austria.